

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
10-CA-284608	10-15-2021

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer UNITED LAUNCH ALLIANCE		b. Tel. No. 303-269-5838
		c. Cell No.
d. Address (street, city, state ZIP code) 1001 RED HAT RD. DECATUR, AL 35601	e. Employer Representative AMANDA BROUGH, LR MANAGER	f. Fax No.
		g. e-Mail AMANDA.H.BROUGH@ULALAUNCH.COM
		h. Dispute Location DECATUR, AL
i. Type of Establishment (factory, nursing home, hotel) FACTORY	j. Principal Product or Service ROCKET BUILDING AND LAUNCHING	k. Number of workers at dispute location 500

1. The above-named employer has engaged in and is engaging unfair labor practices within the meaning of section 8(a), subsections (1,5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

(PLEASE SEE ATTACHMENT.)

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

International Association of Machinists and Aerospace Workers, AFL-CIO

4a. Address (street and number, city, state, and ZIP code)

1521 N. Cooper St., Suite 250
Arlington, TX 76011

4b. Tel. No.

(817) 505-0100

4c. Cell No.

4d. Fax No.

(817) 459-0107

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

International Association of Machinists and Aerospace Workers, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Tel. No.

(817) 505-0100

Cell No.

(682) 401-7835

Fax No.

(817) 459-0107

e-Mail

jlittle@iamaw.org

(signature of representative or person making charge)

James R. Little,
Grand Lodge Representative

Print Name and Title

Address: 1521 N. Cooper St., Suite 250
Arlington, TX 76011

Date:

10/15/2021

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

ATTACHMENT:

Within the last six months, the above-named Employer, through its officers, agents and representatives, has interfered with, restrained and coerced, and is interfering with, restraining and coercing employees of United Launch Alliance in the exercise of their rights guaranteed in Section 7 of the Act.

Since on or about September 1, 2021 and at all times thereafter, the Employer, by its officers, agents, and representatives, has refused to bargain in good faith with the International Association of Machinists and Aerospace Workers, AFL-CIO, a labor organization chosen by a majority of its employees in an appropriate unit, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Specifically, the company has made several unilateral changes to what was agreed upon at bargaining, changes were made without notification or bargaining with the Union. The company has also denied information requests relevant to the changes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
401 W. Peachtree Street, NE
Suite 472
Atlanta, GA 30308

Agency Website: www.nlrb.gov
Telephone: (404)331-2896
Fax: (404)331-2858



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October 15, 2021

James R. Little, Grand Lodge Representative
International Association of Machinists and Aerospace Workers, AFL-CIO
1521 N. Cooper St., Suite 250
Arlington, TX 76011

Re: United Launch Alliance
Case 10-CA-284608

Dear Mr. Little:

The charge that you filed in this case on October 15, 2021 has been docketed as case number 10-CA-284608. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney NATHAN K. GILBERT whose telephone number is (205)518-7526. The mailing address is 1130 22ND ST S RIDGE PARK PLACE STE 3400, BIRMINGHAM, AL 35205-2885. If this Board agent is not available, you may contact Resident Officer KATHERINE CHAHROURI whose telephone number is (205)518-7511.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps

necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Correspondence: All documents submitted to the Region regarding your case MUST be filed through the Agency's website, www.nlr.gov. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to be 'C. H. ...', with a long horizontal line extending to the right.

Regional Director



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
401 W. Peachtree Street, NE
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Atlanta, GA 30308

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Telephone: (404)331-2896
Fax: (404)331-2858



Download
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October 15, 2021

Amanda Brough, LR Manager
United Launch Alliance
1001 Red Hat Rd.
Decatur, AL 35601

Re: United Launch Alliance
Case 10-CA-284608

Dear Mrs. Brough:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney NATHAN K. GILBERT whose telephone number is (205)518-7526. The mailing address is 1130 22ND ST S RIDGE PARK PLACE STE 3400, BIRMINGHAM, AL 35205-2885. If this Board agent is not available, you may contact Resident Officer KATHERINE CHAHROURI whose telephone number is (205)518-7511.

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Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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Correspondence: All documents submitted to the Region regarding your case MUST be filed through the Agency's website, www.nlr.gov. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not

have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'L. Henderson', with a long horizontal line extending to the right.

LISA Y. HENDERSON
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER 10-CA-284608
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1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
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4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES _____)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$ _____		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____		
H. Gross Revenues from all sales or performance of services (Check the largest amount) <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
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12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED LAUNCH ALLIANCE

Charged Party

and

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO**

Charging Party

Case 10-CA-284608

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on October 15, 2021, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Amanda Brough, LR Manager
United Launch Alliance
1001 Red Hat Rd.
Decatur, AL 35601

October 15, 2021

Date

Kalsey Harrison,
Designated Agent of NLRB

Name

/s/ Kalsey Harrison

Signature



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
401 W. Peachtree Street, NE
Suite 472
Atlanta, GA 30308

Agency Website: www.nlr.gov
Telephone: (404)331-2896
Fax: (404)331-2858



Download
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November 5, 2021

Corrected

United Launch Alliance
Attn: Amanda Brough
9950 E. Easter Ave
Unit A
Centennial, CO 80112

Re: United Launch Alliance
Case 10-CA-284608

Dear Mrs. Brough:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

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Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

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Very truly yours,

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LISA Y. HENDERSON
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

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CASE NAME	CASE NUMBER 10-CA-284608
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1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
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4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES _____)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$ _____		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____		
H. Gross Revenues from all sales or performance of services (Check the largest amount) <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED LAUNCH ALLIANCE

Charged Party

and

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO**

Charging Party

Case 10-CA-284608

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on November 5, 2021, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Amanda Brough, LR Manager
United Launch Alliance
1001 Red Hat Rd.
Decatur, AL 35601

November 5, 2021

Date

Kalsey Harrison,
Designated Agent of NLRB

Name

/s/ Kalsey Harrison

Signature



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
401 W. Peachtree Street, NE
Suite 472
Atlanta, GA 30308

Agency Website: www.nlrb.gov
Telephone: (404)331-2896
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March 4, 2022

(b)(6), (b)(7)(C)

IAMAW, District Lodge 75
502 Plaza Dr.
Enterprise, AL 36330

United Launch Alliance
Case 10-CA-284608

Dear (b) (6), (b) (7)(C):

We have carefully investigated and considered your charge that United Launch Alliance has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

Your charge involves the Employer's Covid-19 vaccination policy and potential religious exemptions thereto, and makes three allegations against the Charged Party, United Launch Alliance ("ULA"):

1. Unilateral change related to the Employer no longer allowing serology testing to be a substitute for Covid-19 vaccination,
2. Unilateral implementation of an attestation form for employees claiming religious exemptions from the Covid-19 vaccination, and
3. Failure to provide the Union with the talking point document/questions used by the Employer's managers to interview employees regarding their requested religious exemptions from vaccination.

In regard to the serology testing unilateral change, this change was required by Executive Order 14042, which required all employees of federal contractors, such as ULA to be vaccinated against Covid-19. The interpretative guidance provided by the government specifically stated that serology testing was not an acceptable substitute for vaccination. This was a mandate with which ULA had to comply. The Board has previously held that an employer is relieved from its obligation to bargain over a change to employees' terms and conditions of employment, if such a change is required by law. See *Murphy Oil USA*, 286 NLRB 1039, 1042 (1987); and *Standard Candy Company*, 147 NLRB 1070, 1073 (1964). The prohibition against the use of serology testing was a provision which ULA had no discretion over and one which was required by law. Thus, ULA did not violate Section 8(a)(5) of the National Labor Relations Act when it implemented this change.

In regard to the attestation form unilateral change, the Board has recognized that not every minor unilateral change in working conditions constitutes an unfair labor practice. To violate Section 8(a)(5), the change in working conditions must be “material, substantial and significant.” *Xidex Corp. v. NLRB*, 924 F.2d 245, 253 (D.C. Cir. 1991). ULA’s use of an attestation form to provide it with additional information about employees’ exemption requests does not rise to the level of a “material, substantial and significant” change to employees’ terms and conditions of employment. Additionally, the parties’ negotiated agreement, the Declaration of Commitment, states that the Employer will undertake an interactive process with employees to determine the merit of their religious exemption requests. It appears the form is part of that interactive process.

Lastly, the Union’s initially requested outline and the later requested questions were prepared by the Employer’s legal counsel in anticipation of potential future litigation. Otherwise relevant information is sometimes exempt from production because it is confidential, proprietary, or otherwise privileged. See, e.g., *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 319-320 (1979). Given the possibility that the religious accommodation requests could be denied and then subject to judicial or administrative scrutiny, ULA’s counsel had an objectively reasonable belief that litigation was a real possibility. Therefore, the attorney work product privilege shields the outline and questions prepared by counsel from production to the Union. See *Ralphs Grocery Co.*, 352 NLRB 128 (2008) (“attorney work-product privilege applies to documents prepared by a party or his representative in anticipation of litigation.”). Additionally, the Union had representatives present for many of these meetings and such representatives heard the questions and discussions at issue. As such, the requests do not appear relevant or necessary under the circumstances. Finally, the Union’s need for the questions is outweighed by the Employer’s attorney work product privilege since the Employer did not rely on any of the information from the discussions for its blanket denial of all religious accommodation requests.

Charging Party’s Right to Appeal: The Charging Party may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: You must file your appeal electronically or provide a written statement explaining why electronic submission is not possible or feasible. Written instructions for the NLRB’s E-Filing system and the Terms and Conditions of the NLRB’s E-Filing policy are available at www.nlr.gov. See [User Guide](#). A video demonstration which provides [step-by-step instructions](#) and frequently asked questions are also available at www.nlr.gov. If you require additional assistance with E-Filing, please contact e-Filing@nlrb.gov.

You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. If you cannot file electronically, please send the appeal and your written explanation of why you cannot file electronically to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **March 18, 2021**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than March 17, 2021. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before March 18, 2021**. The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after March 18, 2021, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor requests to limit our use of appeal statements or evidence. Upon a request under the Freedom of Information Act (FOIA) by a party during the processing of an appeal, the Agency's FOIA Branch discloses appeal statements, redacted for personal privacy, confidential source protection, or other applicable FOIA exemptions. In the event the appeal is sustained, any statement or material submitted may be introduced as evidence at a hearing before an administrative law judge. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Very Truly Yours,



LISA Y. HENDERSON
Regional Director

Enclosure

cc: Jonathan Spitz, Attorney
Jackson Lewis P.C.
171 17th Street, NW, Suite 1200
Atlanta, GA 30363